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TRIAL BY JURY, *K*
AND
LIBERTY OF THE PRESS.

TRIAL BY JURY.



LIBERTY THE PRESS.

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SECTION I.

TRIAL BY JURY,
TO SECURE US FROM UNNECESSARY PROSECUTION,
AND TO PROTECT US AGAINST
INJURIOUS DECISIONS.

WHILST the eloquent and undismayed DEFENDER
of the LIBERTY of the PRESS shall continue to
plead :—Whilst the faithful FRIEND OF THE PEOPLE,
by defending our rights, continues to strengthen our Constitu-
tion ; to enlighten, and to charm his cotermporaries into the
emulation of his example ; and, whilst we mentally contemplate
that glorious monument, erected for the benefit of the people at
the shrine of virtue, on which stands inscribed,

The REDEMPTION

OF THE

RIGHTS OF THE PEOPLE,

FROM LONG INSIDIOUS USURPATION,

THE PROUD REWARD

OF

INTEGRITY UNSUSPECTED,

AND

TALENTS UNSURPASSED,

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TRIAL

TRIAL by JURY, though long familiar to the willing ear of Britons, must continue to generate new veneration, even among them, and to impress distant nations with its purity, dignity, and importance ; nay, even posterity will be induced to rival each other in admiration, until the iron arm of some new found tyranny shall deface its beauty, or time shall be no more !

The tribute of applause being paid to the restorers of our long alienated right—" the " Power of juries to decide on both Law " and Fact, in prosecutions for Libel ;"—and this brilliant conquest recorded in our hearts ; our next object of consideration is, the means of preserving and handing the sacred pledge down to posterity, as perfect and untainted, as, in its present purified state, we now receive it.

Beautiful as we behold trial by jury, in
theory ;

theory; and competent as it is to afford us all the blessings and advantages it promises; yet without our farther aid and support, even this alluring fabric cannot long withstand the insidious attack—the undermining sap, which designing men may, and, in all human probability, *will* attempt against it. We ought, therefore, not only to be thankful for its attainment, but gratitude requires that we should deserve it by our conduct.

Had Mr. Fox's Act been obtained thirty years ago, or had its principles been understood, and firmly acted up to, as became the duty of a People tenacious of their birth-rights and privileges, how much poignant distress, undeserved punishment, exorbitant fine, and loathsome imprisonment, would have been unfelt—how many unhappy victims had not, in that period, fallen under these severe afflictions—a period, possibly of more importance to the Liberty of the Press,

the state of civil government, and the general dissemination of knowledge, than any of the same duration within the annals of History? Though this may be a reflection more particularly applicable to men in the habit of committing their thoughts to the press, it is not, however, of small importance for us to consider the wounds which civilization has sustained, as a means of preventing them in future.

Some attentions and support this transcendent fabric must ever require ; not the least of which is an occasional attendance to serve on juries. This is so easy to individuals, so reasonable in itself, that a good citizen will blush at any remissness of which he may be conscious,

Judge Blackstone has told us, " that it is
 " the transcendent privilege of every English-
 " man, that he cannot be affected in either
 " his

“ his Property, his Liberty, or his Person,
 “ but by *the unanimous consent of twelve of his*
 “ *Neighbours and Equals.*” What benign
 comfort, what security of Liberty, Person,
 and Property, does the abstract impression
 of this doctrine imperceptibly instil into our
 minds ; and how superior does it teach *us to*
value ourselves over the inhabitants of other
 regions of the world, where trial by jury is
 unknown ! Happy had now been distracted
 France, inhabited by twenty-five millions of
 people, could a Frenchman formerly, like
 ourselves, have said—“ my Liberty, my Per-
 “ son, my Property are sacred, until at least
 “ twelve Frenchmen can be found unani-
 “ mously of opinion, that fact and law
 “ demand that I should submit to a depriva-
 “ tion of them.” If, then, the present mi-
 series of Europe may be attributed to the
 want of that formidable rampart of the peo-
 ple’s rights, the trial by jury, which I most
 cordially believe :—If we behold despotism

exercised in every state throughout the world where trial by jury has not erected a standard ; and, if even in our own, where it is known “ to be almost coeval with the country, and its very institution to have given birth to an imperfect constitution ;” we find, that the mind of man, naturally prone to tyranny and usurpation, had, in the course of time, so completely undermined its very essence, as almost to have reduced an empannelled jury to the mere skeleton of abject obedience to the expounder of the law.--How glorious then ought to be the exultation of Britons ; and how personally grateful should they feel towards their fellow-citizens, whose integrity, eloquence, and undismayed perseverance, have restored to us this blessing ; with the splendor and purity of its original intention !!—Such feelings should convince us, that it is beneath the dignity of our character to shew an indifference, or a disinclination to serve on juries ; evasions from which

which have been to my own knowledge, so frequent, as even to have afforded the opportunity and specious plea for those usurpations of which we have hitherto had reason to complain.

To be satisfied that this is not an occasional opinion, or some newly adopted principle, I hope it will not be deemed impertinent to assert, that ever since I have attained the age of qualification, I have never declined acting either as a grand or petty juror according to the citations I may have received; and though for many years entrusted with important public duties, I have never suffered either those, or my own private concerns, of whatever nature they may have been, to serve as pleas for the evasion of this my first duty as an Englishman.

Next to the disinclination of serving on juries, is another evil which has lately ap-

peared of no less dangerous tendency : I mean, that of the voluntary, though unintentional disqualifications, to act as jurors, by means of signatures to parochial declarations, most loyally intended, and so far laudable ; but certainly, in many particulars, infringing violently on our privileges ; and even fatally propagating those evils, which a mistaken zeal might have hoped to dissipate. It did not perhaps at first occur, that such combinations violated the constitution by the erection of tribunals, inquisitions, and inquisitors, as odious in name every where, as arbitrary and illegal in practice. Who would not shudder, if but for a moment, considered as an inquisitor ? And yet, how many have voluntarily assumed that office ! I will endeavour to illustrate this by adverting to some of the leading points of the declarations in question.

1. One

1. One of the objects is declared to be, to aid the civil authority in quelling riots, tumults, &c. Is not this acknowledging, that the Executive Government is either inadequate to its functions, or that they are so badly administered, as to want the necessity of aid? And, is it not an assurance of the existence of riot and tumult; to the truth of which, your declarations and subscriptions are pledged. I must affirm it as a truth, that the powers possessed by the Executive Trustees of this country, are more than competent to their duties; and, were it otherwise, I hope they are not so unwise to acknowledge such insufficiency by the acceptance of any such offers. To pretend that the people are riotous and tumultuous, is a foul imputation—a gross libel on them; and every one who loves the good order which prevails, and is satisfied of the competency of the Executive Government to discharge its functions, must consider any declaration

declaration to the contrary as deserving severe reprobation.

2. Denunciations are issued against the circulators of all such publications as have a tendency to sedition, and rewards are held out to informers.—Here again, zeal has strangely exposed prudence; and a mischief is propagated by a blind endeavour to avert it. Just returned from the triumph of a late victory in establishing the uncontrouled liberty of the press, by an act supported by the suffrages of the **WHOLE NATION** save **THREE OPPOSING VOICES**, there is now a precipitate determination to violate it; and a virtual declaration that the nation shall not have that privilege. And, instead of the three individuals who officially declared their hostility to it; and, therefore, had the eyes of the whole nation directed to

to their conduct, endeavours are now used so to multiply its enemies, that its true friends may chance to be borne down and suffocated in the confusion, as will appear ;

3. When citizens are called on to unite in this assumed jurisdiction, with design to prosecute, punish, reward, &c. Is it then meant to be declared that the established laws of the empire, which are so numerous as to give employment and fortunes to one hundred thousand men engaged in the profession, are, nevertheless incompetent to punish the offences of which cognizance is thus unconstitutionally assumed ; and as if there were no other jurisdiction ? Under this impression, every man is qualified and capable of becoming a vile corrupt informer and an incorrupt judge of libel and sedition ; and in the very same breath, again disqualified from acting either as judge, juror, or witness, by summarily pre-judging and pre-determining offences

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ces even before they have been committed. Thus, unwarily, all the pains are taken which ingenious men can take (and greater ingenuity was never more requisite) to undo these extraordinary doings, by requiring every body to associate; so that the probability is, that we may soon have offences to arraign without an unprejudiced magistrate before whom to arraign them; and offenders to try, without an impartial jury to decide.—Or, if otherwise, as all good citizens, not foreseeing or reflecting on the consequences of these implied evils, will have united in associations which have for their object the pure support of the king and constitution; by rashly and injudiciously mingling the discordant principles of jarring and restless politics with professions of loyalty,—by a poisonous composition of loyalty, sedition, and libel,—and by a treasonable interference with the laws of the state, we shall leave only such of the suspicious and disaffected who may not find employment,

employment as informers, to perform the distinct duties of magistrate and juror ; and thus become the sole arbiters and disposers of all the informations, libels, seditions, riots, and tumults, which the influence and enticement of profered rewards, collusion and secret combination may excite.

4. Neither are extraordinary denunciations against productions of seditious or libellous tendency, calculated to obtain the end which is promised. So far from correcting the mischievous impression, which such productions are admitted to be capable of making on the public mind ; by fulminatory denunciations, it is avowed that there is no ability to over-rule their influence and reasoning ; and, therefore, resort is to be had to violent suppression and summary condemnation.— These denunciations are so general and undefined, that it is impossible to say precisely what doctrines may or may not be the marked

ed objects of indignation and resentment.—
 If they go to question the scheme of our constitution and government, I am decidedly of opinion, that the easiest and most efficacious way would have been to expose the poison which the publications in question might chance to contain; and to instruct uninformed Britons in the principles of the constitution. It is not the constitution that is bad, but the extravagance and intrigues of the people in power, which deform its appearance, and render it hideous to such as see through a distant medium; and perhaps only judge of it by the payment of taxes. And this, possibly, there may be a greater desire of suppressing, than all the libels and seditions, as well those which have as those which have not appeared. Doubts of our constitution can only proceed from want of knowledge; while to explain what the constitution really is, would be the infallible means of making those who live under it sensible of the blessings they derive from it; and
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of increasing their attachment. Such is the design of this address; and if it should only tend to render one misled citizen a convert to the solid blessings we possess, the object will be answered and my time amply requited. And here I shall conclude my observations on trial by jury with a solemn exhortation to my countrymen,—to emulate each other in fulfilling their duty, as Jurors, with alacrity, patience and cheerfulness, as the certain means of protecting each other against oppression when attempted; of preserving the dignity of our laws when offended; and as the infallible means, of maintaining the King and the People in that uninterrupted affection and harmony which are the reciprocal object and true interest of both.

SECTION

SECTION II.

THE LIBERTY OF THE PRESS.

THIS object is so inseparably connected, and interwoven with the general liberties, and welfare of mankind, as to command our most active and lively protection. The liberty of the press is indeed the grand cement and organ of society ;—the faithful channel by which all good works are promulgated, and bad ones censured and exposed. It is the industrious and indefatigable agent for the instant circulation of particular intelligence, and for the deliberate dissemination of general knowledge: the infallible support of the honest, and safe resort of the injured. It is the jealous avenger of wrongs ; the vigilant guardian of rectitude. It distributes punishment to vice and rewards to virtue. It is an impenetrable shield
 against

against oppression, and the soul of integrity.—It is, as it were, the discerning eye of the public, and respects and distinguishes men as their conduct intrinsically merits. It is the sincere friend of freedom. The implacable enemy of slavery. The intellectual mirror of the universe designed to reflect happiness on mankind, in which every man has an inherent property. And it is so inseparably attached and affianced to trial by jury, that they are the immutable support of each other; and so long as jurors support the press, the press will support jurors. It thus becomes the soul of all our personal liberties; and the national safeguard, without which the dogmatical mandate of an ambitious minister might be rendered the sole arbiter of civil government and freedom; and that constitution which we so enthusiastically venerate, soon become a dead letter.

Such are the virtues and diffusive proper-

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ties of the press: such the benefits it professes to propagate throughout the world, to the unshackled exercise of which is committed the enviable constitution of England! How rigid, then, should we not be in maintaining and preserving this universal vehicle of human wisdom, in which the happiness of the world and of generations yet unborn are so essentially involved! With what determination and ardour should we not insist on its free use; and, how resentful ought we not to be on any abuse likely to endanger it!—

Here again, my friends, let us pause, and unite in paying the grateful tribute of sensibility:—Let us hail the GUARDIAN GENIUS of BRITAIN, to whose splendid talents we are indebted for this lately acquired ornament—the corner stone of that heavenly attribute, to which nature a ve existence, but selected him to emanate its virtue

tue and to interpret its intelligence, to the glorious purpose of encreasing the happiness of mankind!—Neither let us forget to applaud the valuable services which in defiance of every discouragement and encreasing difficulty, the cause derived from the long and unremitted exertions of the celebrated orator of the English bar, and which so forcibly contributed to its success!—

As I have given my thoughts on the important use of the press, I shall offer some observations on the abuse of it. I am well aware that so extensive a blessing cannot be diffused in a world composed of human beings, without carrying along with it the misfortune of partial evil: yet, where much must necessarily be imperfect, we should look only to the preponderance of the scale; and while that is in the favour of virtue, we ought not to be discontented. With regard to the evil, good sense should teach us, that violent coercion

cannot be the effectual mode of repressing it. Silence and contempt are the only weapons with which abuses of the press in general should be combated, and which never fail to inflict a mortal blow. Should, however, the depravity of the times so much sway the minds of men as to induce them to circulate publications with a view to excite the people to resist the civil magistrate, or to obstruct the execution of the existing laws, such publications are certainly deserving the censure of society, and the seasonable punishment of the law:—but, the degree of that punishment and that censure should, in all cases, be determined by society in its two-fold delegation of juries: I mean that the offences of the press, called libels,—like every outrage of the laws of society, should be subject to a similar process. This, I conceive, must have been the original meaning of our constitution. Whereas, such offences of the Press as are deemed obnoxious to government,

ment, are now prosecuted on *ex-officio* information by the attorney general, who is an officer of the crown, *wherever* or *whenever* he may be *ex-officio* instructed to carry his process on issue direct, before a petty jury only.—So that the grand jury, that palladium of the liberties of England, “formed
 “ from among ourselves to secure us from un-
 “ fair or unnecessary prosecution,” is in this instance superceded. Nor do I conceive the alteration which I here suggest, at all opposed by the constitutional principles of Sir William Blackstone, who speaking of *ex-officio* prosecutions (vol. 4. page 308) describes them to be, “such enormous misdemeanors
 “ as peculiarly tend to disturb or endanger
 “ the King’s government, or to molest or
 “ affront him in the regular discharge of the
 “ royal functions: for offences so high and
 “ dangerous in the punishment or prevention of which a moment’s delay would
 “ be fatal, the law has given to the
 “ crown

“ crown the power of an immediate pro-
 “ secution, without waiting for any pre-
 “ vious application to any other tribunal.”
 Here Sir William Blackstone clearly cannot
 mean promiscuously to include prosecutions
 for every description of Libel, fortuitously
 and constructively arising in “ the free dis-
 “ cussion and examination of the principles
 “ of civil government, and of all matter of
 “ public opinion.”

An entire alteration, or some modifica-
 tion of the present practice, was never more
 necessary than at this time of innovation
 and unsettled opinion. The protection of
 the subject against interested suspicion and
 unprovoked oppression, is the more urgent-
 ly called for, as since the establishment of
 the associations to reward informers against
 the circulation of productions of seditious
 tendency, &c. upwards of one hundred,
 informations, (as I have been told, though I
 should

should hope the number is somewhat exaggerated) have been preferred to the attorney general for *ex-officio* prosecution; even during the sitting of the GRAND JURY OF MIDDLESEX, in the centre of this metropolis; before whom two or three informations did however find their way; as it was naturally conceived to be the constitutional jurisdiction of the kingdom*.

* The time for prosecutions of libels, like those on penal statutes, ought to be limited: for, if the prosecution is not immediate, the evil, which, in the first instance, a jury might have arrested, is circulated beyond that reach which is the object of preventative punishment. And it is doubtful, whether silence for a reasonable time does not even sanction a libel. Nor, is the mischief of long delay at all confined to the original work, since every vender in its propagated state becomes unwarily involved. It is to be hoped the associations for rewarding informers on this subject, do not mean their denunciations to extend to venders of copies, before the Country, in the capacity of a Jury, have condemned the original: but, as I have before observed, it is almost impossible to define, either the objects of their disapprobation, the parties likely to be exempt from their anger, or the intended extent of so deformed a jurisdiction.

Committing

Committing this suggestion to the judgment of abler men, I shall conclude the subject with an admonitory address to some of the new formed associations; in the hope of awakening them to a sense of that unconstitutional conduct into which their intemperate zeal has plunged them. As free Citizens of the same state with myself, I trust they will receive, without passion or prejudice, what I presume to offer.

The professed object of your associations was to declare an attachment to the king and constitution; and, thus far, the institution could not be too much commended. This was all that the particular exigence required; this you accomplished. And had you rested there, your conduct would have claimed the unanimous support of the nation. But, this laudable object was no sooner obtained, than you corrupted its purity; and either over-zealous, or ignorant,

or

or regardless of the means by which the desired end was to be maintained, you adulterated your loyalty by mingling with it discordant politics ; and undermined the constitution, by direct attempts to destroy the very soul of those liberties, which are its best support.

By correspondence with each other, and by circulating such prints only as tend to support your own unscrutinized doctrines : by condemning indiscriminately all others as " libellous, or seditious, exciting to riot " or tumult," you every where set the most subtle engines in motion so far to destroy the liberty of the press, as to reserve the exclusive abuse of it to yourselves. And you still expect that these corrupted channels will possess sufficient virtue to render every man a convert to the principles they promulgate. The people of a free state are however not to be dragooned into affection and reverence for such opinions of " sedition
and

“and libel, riot, and tumult,” as you may wish to establish.

Be assured, that the liberty of the press, the “implacable enemy to slavery” is too firmly rooted in the heart of the world, to be shaken by any such sacrilegious efforts; that the happiness of mankind is too deeply involved in its preservation to withhold their most active faculties in its defence; and in branding its opponents with all the opprobrium attached to declared enemies of the human race. Be advised, and avert farther reprehension from this “jealous avenger of wrongs.”—Retire from impending disgrace; and purify your adulterated loyalty. Remember, that the liberties of these kingdoms are the sole and infallible support of the constitution; and that all societies tending to undermine it are treasonably hostile.—Hasten then, though late, to restore yourselves to the dignity of citizens of a free state.

F I N I S.

